

REMARKS

This Amendment is submitted in response to the Office Action mailed on September 14, 2004. Claims 1-14, 20-25 and 29-37 have been canceled without prejudice or disclaimer in response to a restriction requirement raised by Examiner. Claims 15 and 26 have been amended and new claims 38-49 have been added. Claims 15-19, 26-28 and 38-49 remain in the present application. In view of the foregoing amendments, as well as the following remarks, Applicants respectfully submit that this application is in complete condition for allowance and request reconsideration of the application in this regard.

The Specification has been amended on Page 10, lines 12 and 14 to overcome the objection raised by Examiner and to correct clear typographical errors. Applicants have also amended the Specification at Page 6, line 24 to provide the corresponding issued U.S. patent number to the referenced patent application and to correct clear typographical errors.

While Applicants respectfully traverse Examiner's rejection of independent claim 15 under 35 U.S.C. §112, Applicants have amended that claim to recite "configured to . . ." in lieu of "capable of . . ." to clearly overcome the rejection under §112 and request that the rejection be withdrawn. Independent claim 26 has been amended to provide proper antecedent basis for the recited "specimen slide" and the rejection should be withdrawn.

Applicants respectfully traverse the provisional obviousness-type double patenting rejections of claims 15-19 over claims 1-5 and 7 of co-pending U.S. Serial No.

10/299,290. In particular, independent claim 15 of the present application has been amended to recite that each of the reagent containers includes an upper wall, a base wall, and a tubular side wall interconnecting the base and upper walls. The upper wall is spaced apart from the base wall along an imaginary line passing through the base and upper walls. The base wall has a concave well with a nadir and the upper wall has an access opening. The nadir and access opening are aligned with each other along the imaginary line.

In contrast, claims 1-5 and 7 of copending U.S. Serial No. 10/299,290 recite "a plurality of reagent containers" but are generic with respect to the configuration of the reagent containers. Accordingly, Applicants submit that the combination of elements recited in each of independent claim 15, and dependent claims 16-19, is not obvious over claims 1-5 and 7 of co-pending U.S. Serial No. 10/299,290 and the obviousness-type double patenting rejection should be withdrawn.

Claims 15, 18-19 and 26-28 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kalra et al., U.S. Patent No. 5,948,359 in view of Levine et al., U.S. Patent No. 5,854,075. Claim 16 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Kalra et al. In view of Levine et al. and further in view of Tseung et al., U.S. Patent No. 6,746,851. Lastly, claim 17 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Kalra et al. in view of Levine et al. and further in view of Rhett et al., U.S. Patent No. 5,839,091. While Applicants respectfully traverse these rejections, Applicants have amended each of independent claims 15 and 26 to

more sharply define the present invention over the prior art of record and respectfully request that the rejections be withdrawn.

As noted above, Applicants have amended independent claim 15 to more sharply define the configuration of the reagent containers. Support for this amendment is located at Page 13, line 5 through Page 14, line 18 of Applicants' disclosure, for example. Applicants have similarly amended independent claim 26 to more sharply define the configuration of the reagent container.

Applicants respectfully submit that the combination of elements recited in independent claim 15, and the combination of steps recited in independent claim 26, are not taught or suggested by the prior art of record and the rejections should be withdrawn. Moreover, as claims 16-19 depend from allowable independent claim 15, and claims 27-28 depend from allowable independent claim 26, and further as each of these claims recites a combination of elements or steps not taught or suggested by the prior art of record, Applicants submit that these claims are allowable as well.

Applicants have added new claims 38-49 and submit these claims are allowable over the prior art of record.

Conclusion

In view of the foregoing response including the amendments and remarks, this application is submitted to be in complete condition for allowance and early notice to this affect is earnestly solicited. If there is any issue that remains which may be

resolved by telephone conference, the Examiner is invited to contact the undersigned in order to resolve the same and expedite the allowance of this application.

Applicants do not believe that this response requires that any fees be submitted, however, if any fees are deemed necessary, these may be charged to Deposit Account No. 23-3000.

Respectfully submitted,

WOOD, HERRON & EVANS, L.L.P.



David H. Brinkman, Reg. No. 40,532

2700 Carew Tower
441 Vine Street
Cincinnati, Ohio 45202
(513) 241-2324 - Voice
(513) 421-7269 - Facsimile